

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re REYNALDO M., a Person Coming  
Under the Juvenile Court Law.

B191840  
(Los Angeles County  
Super. Ct. No. FJ38110)

THE PEOPLE,

Plaintiff and Respondent,

v.

REYNALDO M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Patricia Nieto, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Wardship order affirmed with directions.

Niccol Kording, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews and Victoria B. Wilson, Deputy Attorneys General, for Plaintiff and Respondent.

The minor, Reynaldo M., appeals from the June 2, 2006 order declaring him a ward of the court (Welf. & Inst. Code, § 602) and placing him in a short-term camp community placement program. The juvenile court sustained the allegations of delinquency petitions filed March 16 and April 5, 2006, charging the minor with: possession of tools to commit vandalism or graffiti (Pen. Code, § 594.2, subd. (a)); stun gun possession (Pen. Code § 12651, subd. (d)); second-degree robbery (Pen. Code, § 211); and carrying a switchblade knife. (Pen. Code, § 653k.) The juvenile court declared the robbery a felony and the remaining three counts misdemeanors. The clerk's minutes state the juvenile court ordered the maximum confinement to be 5 years, 10 months. No such oral pronouncement was ever made though by the juvenile court. The minor argues the juvenile court improperly: set his confinement time beyond the statutory maximum; failed to indicate whether it was aggregating the maximum confinement term; and failed to set forth probation conditions. We affirm the wardship order but remand the matter with directions to calculate the maximum confinement time and set probation conditions.

We view the evidence in a light most favorable to the judgment. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Elliot* (2005) 37 Cal.4th 453, 466; *Taylor v. Stainer* (9th Cir. 1994) 31 F.3d 907, 908-909; see also *In re Cheri T.* (1999) 70 Cal.App.4th 1400, 1404; *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089 [standard of proof is the same in juvenile proceedings as that required in adult criminal trials]; *In re Jose R.* (1982) 137 Cal.App.3d 269, 275 [same].) On March 9, 2006, Los Angeles Police Officer Michael Pettinato recognized the minor as a member of the local gang. Officer Pettinato saw the minor coming from an alley where gang graffiti had recently been observed. The minor dropped a plastic bag containing a spray paint can as Officer Pettinato approached.

On March 14, 2006, Officer Pettinato saw the minor standing with another gang member in the doorway of a restaurant. When they saw the officers, the minor and the other gang member walked quickly into the restaurant. As Officer Pettinato entered, the

minor and the other gang member walked to the rear of the restaurant. As the minor sat down, he threw a stun gun under the table.

On the evening of December 10, 2005, David Loth and Isaac Rivera were approached by a man and a woman who identified themselves as members of the local gang. The two individuals would not allow Mr. Loth to leave. Shortly thereafter, another six individuals joined the man and woman. The man and woman asked Mr. Loth for money. Ultimately, Mr. Loth's keys, wallet, personal documents, and watch were stolen. Mr. Loth was beaten for approximately 15 minutes to the point where his teeth were broken, his face was beaten beyond recognition and there were shoe prints on his face. At approximately 1 a.m. on December 10, 2005, the minor was detained a few blocks away from where the incident occurred for a possible curfew violation. During a search at the police station, Officer Jose Reyes discovered a switchblade knife in the minor's pants pocket.

Mr. Loth later identified a picture of the minor from a photographic lineup shown to him by police as one of those who committed the assault and robbery. Mr. Loth identified the minor at the adjudication hearing as well. Mr. Loth also identified the minor's cousin, Tomas G., who was present in the courtroom, as one of the assailants. Mr. Loth was fearful about testifying.

First, the minor argues that the juvenile court improperly set his maximum confinement time at 5 years, 10 months. In the case of *In re Eric J.* (1979) 25 Cal.3d 522, 536, the California Supreme Court held: "Under [Welfare and Institutions Code] section 726, if the juvenile court chooses to 'sentence' consecutively on multiple counts or multiple petitions, the maximum term must be specified in accordance with the formula set forth in subdivision (a) of Penal Code section 1170.1, i.e., the sum of the 'principal term' (the longest term imposed for any of the offenses) and 'subordinate terms' (one-third of the middle term imposed for each other offense)." (Footnote omitted; see also Welf. & Inst. Code § 726, subd. (c); *In re David H.* (2003) 106 Cal.App.4th 1131, 1133-1134; *In re Adrian R.* (2000) 85 Cal.App.4th 448, 454; *People v.*

*Murray* (1994) 23 Cal.App.4th 1783, 1789.) The *Eric J.* court further held that the application of Penal Code section 1170.1, subdivision (a) applies to misdemeanors as well as felonies in setting the confinement time of minors. (*In re Eric J., supra*, 25 Cal.3d at p. 537-538; *People v. Murray, supra*, 23 Cal.App.4th at p. 1789.)

In this case, the minute order indicates that the juvenile court imposed the maximum confinement time of 5 years as to the robbery and 10 months as to the 3 misdemeanors. The maximum term for second degree robbery is five years. (Pen. Code, § 213.) Pursuant to Penal Code section 19, a misdemeanor offense is punishable by a maximum term of six months. Each of the misdemeanor conduct counts in this case is subject to the Penal Code section 19 six-month potential term. (Pen. Code, §§ 594.2, subd. (a); 653k, 12651, subd. (d).) As a result, the maximum term the juvenile court could impose in this case is five years for the robbery and two months for each of the misdemeanor offenses, for a total of five years, six months. (Pen. Code, § 1170.1, subd. (a).) The juvenile court never orally identified the confinement time. Rather, the only thing the juvenile court stated was, “The maximum time is – I think you need to calculate that, as well.” However, the juvenile court never orally stated what was to be the maximum term of physical confinement. It appears the juvenile court intended to aggregate the maximum confinement time for all four offenses found true as set forth in the petitions dated March 16 and April 5, 2006, because that is what is in the clerk’s minutes. Where the record is unclear, it is appropriate to remand the matter to permit the court to exercise its discretion. ( *People v. Furhman* (1997) 16 Cal.4th 930, 942; *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1181-1182.) The failure to exercise a discretion conferred and compelled by law constitutes a denial of a fair hearing and a deprivation of procedural due process. (*In re Sean W., supra*, 127 Cal.App.4th at pp. 1181-1182; *People v. Downey* (2000) 82 Cal.App.4th 899, 912; *In re Ronnie P.* (1992) 10 Cal.App.4th 1079, 1091.) We therefore remand the matter to the juvenile court to allow it to exercise its discretion, clarify its intentions, and correct the maximum confinement time imposed.

Second, the minor argues the juvenile court's failure to impose probationary conditions precludes his ability to determine whether there are related appealable issues. Any such claim is premature and theoretical until such time as probation conditions are imposed. But the minor argues that because the cause will be remanded, the juvenile court may clarify the applicable probation conditions after the remittitur issues. We agree. Because the matter is remanded to calculate the maximum confinement time, the juvenile court may also exercise its discretion to impose probation conditions.

The wardship order is affirmed. The matter is remanded to the juvenile court with directions to: set forth the calculation for the maximum confinement term; impose probation conditions; and correct the minute order to reflect these changes.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.